



April 17, 2001

Ms. Kelly N. Saucier
Assistant City Attorney
City of Missouri City
P.O. Box 666
Missouri City, Texas 77459

OR2001-1520

Dear Ms. Saucier:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146861.

The City of Missouri City Police Department (the “department”) received a request for thirteen categories of information concerning the Fort Bend County Children’s Advocacy Center (the “center”). You state the City of Missouri City (the “city”) holds very few of the records and reports that the requestor seeks. We note that the Public Information Act (the “Act”) compels disclosure of public information that is in existence, but does not require a governmental body to prepare or assemble new information in response to a request. *See* Gov’t Code § 552.002; *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 268 (Tex. Civ. App. – San Antonio 1978, writ dismissed) (ruling that a government agency could not be required to make copies of documents no longer in its possession). You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 264.408 of the Family Code. We have considered the exception you claim and reviewed the submitted information.

We initially note that the department failed to comply with section 552.301 of the Government Code in requesting this decision. Subsections 552.301(a) and (b) provide:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act’s] exceptions . . . must ask for a decision from the attorney

general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a), (b). It appears from the documents submitted to this office that the department received the request for information on February 12, 2001. You did not request a decision from this office until March 1, 2001. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(b) of the Government Code. Because the request for a decision was not timely submitted, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); see Open Records Decision No. 630 (1994). You believe that the submitted information may be confidential under section 264.408 of the Family Code. This office has held that a compelling reason exists to withhold information when the information is deemed to be confidential by another source of law or implicates the privacy interest of a third party. See Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Accordingly, we will consider the department's argument for withholding the information at issue.

Section 264.408 provides in relevant part that "[t]he files, reports, records, communications, and working papers *used or developed in providing services* under this chapter are confidential and not subject to public release under Chapter 552, Government Code, and may only be disclosed for purposes consistent with this chapter." Fam. Code § 264.408(a) (emphasis added). You state that it is unclear from the statute whether the submitted records would be considered "files, reports, records, communications, and working papers used or developed in providing services under this chapter . . ." You have submitted Exhibits B-1 through B-4 to this office for our review. Exhibit B-1 is an Inter-Agency Memorandum of Understanding; Exhibit B-2 is an Addendum to the Interagency Agreement; Exhibit B-3 is the Protocol/Cooperative Working Agreement; and Exhibit B-4 is a report summarizing Strategies for Improvement 2001. Upon careful review, we conclude that these documents do not constitute "files, reports, records, communications, and working papers used or developed in providing services under this chapter" for the purposes of section 264.408, but rather are documents relating to the creation and governance of the center itself. We conclude, therefore, that you may not withhold Exhibits B-1 through B-4 under

section 264.408 of the Family Code. The department must release the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

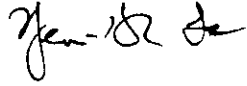
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', with a stylized flourish at the end.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/seg

Ref: ID# 146861

Encl. Submitted documents

cc: Mr. Gary W. Gates, Jr.
2295 Avenue I, Suite 117
Rosenberg, Texas 77471
(w/o enclosures)